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**From:**

**Sent:** Monday, November 24, 2008 6:26:13 PM

**To:**

**Cc:**

**Subject:** FW: Accuracy-related penalty in a year where there is an overassessment

Below is an email an attorney in my branch prepared. I am forwarding it after reviewing it. The numbers supplied by [redacted] in response to your questions support the penalty (although I do not see how the ordering rules of 1.6664-3 are involved, as [redacted] says - perhaps he is just saying that there were other adjustments not due to negligence).

In response to your question, it is possible to have an underpayment (as defined in Treas. Reg. § 1.6664-2) and still have a refund due the taxpayer. Though it is called an underpayment, it is more accurately described as an understatement of tax liability. This means that any tax payments made by the taxpayer are not taken into account in determining an underpayment. Thus, a taxpayer can understate their tax liability but still be owed a refund because they had overpaid. Dealing with these limited facts as presented it would appear that the calculations, as represented by [redacted], are correct. Should you have any questions please contact me at your convenience.

ATTACHMENT [Redacted]